

**AGREEMENT FOR PUBLIC EXHIBITION OF ART
(EXISTING SCULPTURE)
CITY HALL SCULPTURE GARDEN
CITY OF MILWAUKIE, OREGON**

Artist:		City Hall Sculpture Garden Period:	September 2012-2013
Sculpture Name:		Sculpture Exhibition Period:	September 2012-2013
Honorarium	\$750.00	Installation Date:	September, 2012

This agreement, made and entered into and effective upon the execution by and between the City of Milwaukie, Oregon, a municipal corporation (referred to herein as “the City”) and (the Artist named above).

WHEREAS the City has engaged the Milwaukie Arts Committee to administer this Agreement on the City’s behalf, including representing the City in communications with the Artist; and

WHEREAS the City, through the Milwaukie Arts Committee, has selected the Artist’s Sculpture named above (“the Sculpture”) as part of the City Hall Sculpture Garden; and

WHEREAS the Artist has created and has agreed to loan such Sculpture to the City for public display for approximately two years within the City Hall Sculpture Garden,

THE PARTIES AGREE AS FOLLOWS:

1. By the Exhibit A Submission Deadline, if not already submitted, the Artist shall submit to the City those items set forth in Exhibit A, attached hereto and by this reference incorporated in this agreement.
2. Following the Exhibit A Submission Deadline, the City shall notify the Artist of the location selected for public display of the Sculpture during the Exhibition Period (referred to herein as “the site.”)
3. The Artist agrees to transport and install the Sculpture, undamaged, at the site by Installation Date. Except as provided in paragraph 8 below, the Sculpture shall remain the property of the Artist. However, by virtue of this agreement, the City is entitled to possession of the Sculpture, and the Artist agrees to relinquish possession of the Sculpture, from the date of installation until the end of the Exhibition Period described in paragraph 7, below.
4. After, but no later than the seventh day following, the end of the Exhibition Period, the Artist agrees to remove the Sculpture from the site, leaving the pedestal and all other aspects of the site in the same condition as existed prior to installation of the Sculpture.
5. Transportation of the Sculpture to the site, proper installation, proper de-installation, proper removal from the site, and all associated costs and expenses, shall be the responsibility of the Artist. By mutual agreement between the parties, the City may provide assistance with these activities. In order to minimize disruption of pedestrian and/or vehicular traffic, the Artist agrees to schedule

delivery and removal with the City, and to obtain all necessary permits associated with transportation, installation or removal, at least ten (10) days in advance. Upon request the City will assist the Artist in identifying required City permits, obtaining necessary City application forms, etc.

6. During the Exhibition Period, the City shall be responsible for reasonable maintenance of the Sculpture. By mutual agreement between the parties, the Artist may assist the City with maintenance procedures. The City shall take reasonable steps to utilize the maintenance procedures designated by the Artist in the approved concept. The Artist at his or her expense shall provide any designated maintenance materials other than ordinary cleaning agents in the possession of the City. The City reserves the right to decline to implement any or all of the designated maintenance procedures if circumstances, including but not limited to cost, render implementation unreasonable. In the event that the City declines to implement such procedures, the Artist may, with the City's prior written approval, undertake such procedures at the Artist's expense.

7. The Exhibition Period may be shortened or extended by mutual agreement between the parties. Notwithstanding the foregoing, the City reserves the right, with or without cause, to decline or terminate exhibition of the Sculpture at any time.

8. The Artist may sell or agree to sell the Sculpture at any time during the Exhibition Period, subject to the obligation for payment to City of a "gallery fee" in the amount of 20% of the sale of the Sculpture, and, if so sold, may assign his or her right under this agreement to remove the Sculpture at the end of the Exhibition Period. Under no circumstances shall sale of the Sculpture terminate this Agreement or adversely affect the City's rights hereunder, including but not limited to the City's right of possession during the Exhibition Period. Nevertheless, the parties may mutually agree that the Artist may remove a sold Sculpture prior to the expiration of the Exhibition Period, upon the City's approval and acceptance of a replacement Sculpture and installation of the replacement sculpture concurrent with the removal of the sold sculpture. The Artist agrees to promptly provide the City written notice of any sale of the Sculpture, including designation of the party to whom the sculpture should be released upon expiration or other termination of the Exhibition Period, and shall provide a copy of the sale agreement to confirm the identity of the party to whom the Sculpture is released, and shall either tender then or arrange for tender at the time of removal the above "gallery fee".

9. The Artist hereby grants the City, in perpetuity, the right to photograph, film, videotape, or otherwise to record or depict the Sculpture at any time during the Exhibition Period and to use such photographs, films, videotapes, records or depictions at any time thereafter for the purpose of promotion of the City Hall Sculpture Garden or of the City, provided that the City gives artistic credit to the Artist concurrently with such use.

10. The Milwaukie Arts Committee shall pay the Artist an honorarium in the amount stated above for exhibition of the Sculpture, payable following installation of the Sculpture at the site pursuant to paragraph 3, above. No payment shall be due until the Artist has completed and submitted to the Arts Committee the IRS Form W-9 Request for Taxpayer Identification and Certification (<http://www.irs.gov/pub/irs-pdf/fw9.pdf>). Payment shall be tendered, when due, in a manner consistent with the City's accounts payable check run cycle in place at the time payment is due.

There shall be no obligation to make the payment if this Agreement is canceled or otherwise terminated for any reason prior to completion of installation.

11. In the event of:

- Damage to the Sculpture during the Exhibition Period, from whatever cause, and the City Manager reasonably deems the Sculpture to be a danger to the public health or safety, or
- The Sculpture is defaced by graffiti (as defined in ORS 164.381),

the City may give notice (written, email, or telephonic) to the Artist that the Sculpture must be removed or protected within 5 calendar days of the receipt of the notice, in order to eliminate the risk of injury or death to the public, or to remove the graffiti. During that 5-day period, the City Manager may take such action as the City Manager deems appropriate to temporarily protect the public from risk of injury or, if the Sculpture was defaced, to obscure the Sculpture in order to protect the surrounding area from the negative effects of graffiti.

If the Artist does not:

- Remove or otherwise secure the damaged Sculpture so it no longer presents a danger to the public health or safety, or,
- If the Sculpture was defaced, remove the graffiti,

within the 5 calendar day period, the City Manager may, at the City Manager's discretion:

- a. Cause the Sculpture to be removed from display and stored on City property that is reasonably secure, e.g., Maintenance storage area, at City's expense (subject to claim for reimbursement under the insurance policy provided by Paragraph 12);
- b. Secure the damaged Sculpture so it is no longer a threat to public health or safety or, if defaced, to remove the graffiti from the Sculpture, at City's expense (subject to claim for reimbursement under the insurance policy provided by Paragraph 12); and/or
- c. Terminate this Agreement pursuant to Paragraph 14 below.

The Artist shall be deemed to have consented to the City's actions (a) or (b) above. Except to the extent damage to the Sculpture is covered under the insurance policy provided below, the City shall have no additional liability for damage or destruction that may occur during removal or protection of the Sculpture.

12. The City shall insure the Sculpture against damage or loss in an amount set forth in Exhibit A. Such amount is the artist's estimate of fair market value and does not bind City or City's insurer to later dispute the claimed fair market value. The City's obligation to provide insurance is solely for the duration of the Exhibition Period and only while the Sculpture is located at the site, excluding installation and removal. The City shall have no liability for damage or destruction that may occur during transportation to or from the Site, during installation, or during removal.

13. The Artist agrees to indemnify and hold the City harmless from any and all claims, losses, damages, injuries and/or liabilities of any kind whatsoever, including reasonable attorney's fees and costs, arising out of or related to the transportation, installation or removal of the Sculpture, or arising out of or related to any defects of the Sculpture, faulty workmanship of the Artist or any acts of negligence by the Artist, the Artist's agents or employees.

14. This agreement may be terminated at any time by mutual written consent of the parties. In addition the City may terminate this agreement at any time upon the occurrence of any of the following events:

- a. The City fails to receive funding, appropriations or other expenditure authority at sufficient levels to make the payments provided for in this agreement;
- b. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that the City is prohibited from proceeding under the terms of this agreement;
- c. The Artist commits any material breach or default of any covenant or obligation under this agreement.
- d. The Sculpture is damaged or defaced and the City Manager elects to have the Sculpture removed from display, as described in Section 11 above.

15. Except for assignment to a purchaser of the right to remove the Sculpture after the Exhibition Period as provided in paragraph 8, above, this agreement is not assignable by the Artist, either in whole or in part, without the prior written consent of the City. The City and the Artist are the only parties to this agreement and are the only parties entitled to enforce its terms. Nothing in this agreement gives, is intended to give, or shall be construed to give or provide any enforceable benefit or right, whether directly, indirectly, or otherwise, to third persons.

16. The failure of the City to enforce any provision of this agreement shall not constitute a waiver by the City of that or any other provision.

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17. This agreement represents the entire and integrated agreement between the City and the Artist, and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both the Artist and the City.

ARTIST

X _____

Date signed: _____

Address

City, State, Zip

Phone number

Email

CITY OF MILWAUKIE

X _____

City Manager

Date signed: _____

City of Milwaukie

10722 SE Main St

Milwaukie, Or 97222

APPROVED AS TO FORM:

EXHIBIT A to Agreement for Public Exhibition of Art

ITEMS TO SUBMIT TO CITY OF MILWAUKIE

The following list is a synopsis of items that are to be submitted to the City of Milwaukie if not already provided. Please send this information to:

**Milwaukie Arts Committee
City Hall Sculpture Garden
C/O City of Milwaukie
10722 SE Main St.
Milwaukie, OR 97222**

Submit by _____:

1. Sculpture Title :
2. Artist name as it should appear in brochure and on sculpture plaque:
3. Artist's statement for brochure (very brief due to space constraints): (Submitted earlier)
4. Artist's website:
5. Medium of sculpture:
6. Approximate dimensions of the sculpture (height x width x depth):
weight:
7. Drawing, photo, or model of the concept or sculpture the artist wishes to submit for exhibit:
(Submitted earlier)
8. Installation method of attachment to a pedestal or base (approved by city engineering),
equipment needed (i.e. crane, lift, etc.), and approximate time it will take to install the sculpture:
Vehicles used in delivery of sculpture:

Equipment needed:

Estimated time to install:
9. Artists' estimate of market value of the sculpture.
10. Suggested maintenance procedures, including any special materials to be used and the process.